Large infrastructure projects in the context of transboundary environmental impact

By Nadežda KOKOTOVIC, Brussels Energy Club

The practice of recent years has shown more large-scale energy projects, particularly in the Baltic Sea region, are physically located in more than one country, so on October 10 the Brus- sels Energy Club held a meeting dedicated to the environmental impact of such projects. The first part of the meeting was devoted to the available EU and international legal framework for assessing the environmental impact of large-scale projects. The second part illustrated the case study of the Nord Stream 2 Pipeline (NSP2) project. The speakers were Márkla Malena Novakova, Legal and Policy Offi- cer in the Directorate-General for Environment (DG Environment) at the European Commission and Simon Bonnell (picture), Head of Permitting at Nord Stream 2 AG.

Large-scale transboundary projects are projects which are implemented in at least two countries, or having at least two states of origin, that are likely to have significant effects on the environment or significant transboundary impact because of their size or because of the infrastructure (pipelines, industrial facilities, chemical plants, airports, motorways, airports etc.).

The Nord Stream 2 Pipeline (NSP2) was chosen as a case study because this aspect can be assessed in practice: it is planned to deliver 153 billion m³/year of natural gas to the European Union through the Nord Stream 2 Pipeline (similar to the Nord Stream Pipeline built in the 2000s) that spans from Russia through the Baltic Sea to Germany. It runs through the jurisdictions of Russia, Finland, Sweden, Denmark, and Germany, while the potential transboundary effects may concern Estonia, Latvia, Lithuania and Poland. So far, more than 81% of the total length of the pipeline has been laid.

Such a large infrastructure project, that can affect the environment in Baltic Sea states directly or indirectly, is obligated to seek authorisation through the process for the putting into operation of significant projects, as defined by the EIA Directive 2014/52/EU. The process involves different stakeholders within a project’s planning process, and the process of authorisation involves a change of information with other member states that are significantly affected by the project, assess potential transboundary impacts to other relevant states, and propose measures to prevent and mitigate potential adverse impact. As part of the EIA procedure, public consultations and exchanges of information with other member states are obligatory steps before getting the permit.

The application of the EIA Directive has wide socio-economic costs, even though the fixed administrative costs for an EIA are low -- the average costs are around 2-5% of the total costs of a project. The EIA is considered by the European Commission as a tool in achieving Sustainable Develop- ment Goals, as it lays on board con- cerns of various environmental stakeholders in an inclusive way. Multi- lateral agreements between the states around environmental and socio-econo- mic impacts of transboundary projects is necessary as states often have different legal systems and EIA procedures, not always harmonised with the 2014/52/EU Conven- tion and the process of authorisation in- volves different stakeholders within a state, national, regional and local authori- ties, NGOs and the public.

NSP2 developed the national EIAs for Denmark three times for three different routes. The interest in the countries was different. In Finland, the public attention was much higher during the first Nord Stream project, because that offshore project in the Baltic Sea mobilised people. This time, the curiosity was very high in Poland, mostly as a result of the high-level engagement of the local environmental groups around the NSP2 -- so high that the Polish even came to consultations in Denmark. Russia has not ratified the EIA Convention, but has committed to be a party for the implementation and coordination of this procedure for the NSP2.

Most of the 170 comments that emerged from the consultations came in from na- tional authorities and NGOs. Of key con- cern was the issue of impact from the underwater noise on marine mammals from construction and operation of the pipeline, and the risk of temporary or permanent loss of hearing sensitivity in marine mam- mals, also with potentially significant effects may concern Estonia, Latvia, Lithuania and Poland. So far, more than 81% of the total length of the pipeline has been laid.

International, this process relies on the UN Convention on Transboundary Environmental Assessment in a Transboundary Context (the Ecowin Convention), that currently has 64 parties to the EU, all EU member states and most of the countries of the neighbourhood. Within the EU's jurisdiction, the EIA process has been reg- ulated by the EU Environmental Impact Assessment Directive (EIA) since 1985, which has been subject to several amend- ments, the last one in 2014. The impor- tance of this EU international law as a distinct and fostering obligation has been the result of evolution interna- tional law, which means that it is not merely a treaty-based obligation but a re- quirement of general international law.

The developers of such projects with po- tential impact to more than one EU mem- ber state have to submit their application with description of the factors likely to be significantly affected by the project, assess potential transboundary impacts to other relevant states, and propose measures to prevent and mitigate potential ad- verse impact. As part of the EIA procedure, public consultations and exchanges of information with other mem- ber states are obligatory steps before getting the permit.

One of the purposes of public consulta- tions is reaching agreements with other stakeholders who have interests on the route of the pipeline. NSP2 established agreements with professional fishermen and will monitor fishing patterns to en- sure that no impacts to fishing occur and in some jurisdictions pay an annual fish- ery fee. With cave owners and authori- ties, the company had to negotiate how to arrange the crossings and in future NSP2 cannot undo already built or block construction of other infrastructures.

During the route selection, and pipe laying, the company made dozens of historical discoveries, but two are particularly inter- resting: a Russian aircraft from the WWII in the Finnish Exclusive Economic Zone, and a swordfish, 50 years old shipwreck, in good condition, sitting upright on the seabed. Both discoveries were approved by the local archeologists, while NSP2’s task was to ensure that there is no connec- tion between the pipeline operations and the historical site.

NSP2 had received all permits in Ger- many, Finland, Russia, Sweden, but the process was stuck in Denmark for a cou- ple of years. NSP2 had filed the first ap- plication in 2017 for the route through the Danish territorial waters, but due to a change of the law and subsequent lack of response from the ministry of Foreign Af- fairs, the company had decided to file ap- plications for two other routes in 2018 and 2019, one through the Danish territorial waters, and onshore in the Brunsbüttel area in the Brunsbüttel area in the Danish Energy Club, the company finally received a permit from the Danish Energy Agency.

The costs of the NSP might be a burden for developers, but the procedure and results can add to social acceptance and also build confidence with authorities and civil and academic societies. However, there are significant environmental related costs that are not part of the EIA process but implemented through the planning and implementation of the project – like the choice of the route in the case of NSP2, once of the most important things in reduc- ing environmental impact, and the pipeline vessels. NSP2 research vessels had sailed more than 50,000 kilometres to conduct surveys and underwater investi- gations to determine a safe and environ- mentally friendly route.

The Nord Stream gas pipeline projects (NSP and NSP2) have demonstrated that investing resources in prior consultation can help them avoid any transboundary environ- mental impact and hence facilitate permit- ting, but the case also provides a social license to operate in a broader geographical area. Moreover, this project is a good practical example for the EU and its mem- ber states, as it is only still limited prac- tical experience applying the EIA procedure in a transboundary context. The experience gained shows how funda- mentally important corporate trans- parently and public awareness are, in a way for such projects.